THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.34446 OF 1998

DATED : 04-04-2007

Between :

1. Pydi Apparao and 3 others. … Petitioners

And

1. The District Collector, Vizianagaram.,
   And another. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.34446 OF 1998

ORDER:

The petitioners claim to be the owners of different extents of land in Sy.No.33/10 of Singavaram Village, Denkada Mandal, Vizianagaram District. By notification, dated 21-4-1994, issued under Section 4 (1) of the Land Acquisition Act, 1894 (for short, 'the Act'), the said land was sought to be acquired for a public purpose i.e., for grant of house site pattas to the weaker sections. The draft declaration under Section 6 of the Act was also published simultaneously. Aggrieved by the same, the 4th petitioner along with two others filed W.P.No.11448 of 1994. This Court partly allowed the said writ petition by order dated 11-11-1997, thereby quashing the declaration under Section 6 of the Act. Thereafter, the 2nd respondent issued notices dated 12-6-1998 proposing to conduct enquiry under Section 5-A of the Act. The petitioners submitted their objections stating that the land proposed to be acquired is a coconut garden and that apart, all the petitioners are small farmers solely dependent on the land in question. However, the said objections were not accepted and a declaration under Section 6 of the Act was published in the local daily, dated 24-11-1998. Questioning the same, this writ petition is filed contending *inter alia* that the impugned declaration under Section 6 of the Act, dated 24-11-1998, which was published beyond one year from the date of publication of Section 4 (1) notification is illegal and liable to be set aside on that ground alone.

This Court while directing Rule Nisi by order dated 11-

12-1998 ordered that Status quo obtaining as on that day as to the possession of the land in question shall be maintained, however other proceedings may go on.

In the counter-affidavit filed by the 2nd respondent - Revenue Divisional Officer, Vizianagaram, it is stated that having regard to the fact that earlier Writ Petition No.11448 of 1994 was pending till 11.11.1997 and the copy of the same was received by the respondents only on 5-1-1998, the period from 25-6-1994 to 5-1-1998 cannot be taken into consideration and consequently the impugned declaration under Section 6 of the Act cannot be held to be beyond one year.

Heard the learned Counsel for both the parties.

At the outset, it is to be noted that as per clause (ii) of the proviso to sub-section (1) of Section 6 of the Land Acquisition Act, 1894 (for short, 'the Act') the declaration is required to be made within one year from the date of publication of the notification. In the case on hand, the notification was admittedly published on 21-4-1994 whereas the impugned declaration under Section 6 was made on 24-11-1998. It is true that in the meanwhile the proceedings were stayed by virtue of the orders of this Court in W.P.No.11448 of 1994 from 25-6-1994. However, admittedly the said writ petition was disposed of on 11-11-1997. Even after the period during which the proceedings were stayed in W.P.No.11448 of 1994 is excluded, the impugned declaration dated 24-11-1998 is beyond one year prescribed under clause (2) of proviso to Section 6 (1) of the Act.

That apart, the specific allegation made by the petitioners that they were not given personal hearing as required under Section 5-A (2) of the Act has also not been denied by the respondents in their counter-affidavit.

As held by the Supreme Court in HINDUSTAN PETROLEUM CORPN. LTD. v. DARIUS SHAPUR CHENAI[1] Section 5-A of the Act confers a valuable right akin to a fundamental right and therefore the respondents are bound to follow the procedure under Section 5-A of

the Act strictly.

In the absence of any material to show that the petitioners were heard in person as required under sub-section (2) of Section 5-A of the Act, I am of the opinion that Section 6 declaration is vitiated on that ground also.

Accordingly, the impugned declaration dated 24-11-1998 is hereby set aside and the Writ Petition is disposed of with a direction to the respondents to conduct fresh enquiry under Section 5-A of the Act after giving due notice to the petitioner and thereafter to take further steps in accordance with law.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 04-04-2007

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[1] AIR 2005 SUPREME COURT 3520